

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE NO. 1 OF 2003**

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

=====

COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

CADILA LABORATORIES LIMITED. - Opponent(s)

=====

Appearance :

MR. MANISH R. BHATT for Applicant(s).

MR. B.D. KARIA for Opponent(s).

=====

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 01/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The parties are heard.

2. The Income Tax Appellate Tribunal, Ahmedabad Bench `B', at the instance of the Revenue, has made this Reference on the following questions for the opinion of this Court, which arise out of I.T. Appeal Nos.3556 and 3877/Ahd/1992 pertaining to Assessment Years 1989 and 1990:

“(1) Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT (A) allowing the premium amounting to Rs.1,05,000/- paid towards purchase of deferred annuity policies in respect of two directors as business expenditure?

(2) Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT (A) directing the AO to allow deduction under section 80I without reducing the deductions admissible under Section 80HH?”

3. Taking up Question No.2 first, we must immediately hold that the Appellate Tribunal was right in law and on facts in confirming the order passed by the Commissioner of Income-Tax (Appeals) directing the Assessing Officer to allow the deductions under Section-80I of the Income Tax Act, 1961 (`the Act' for short) without reducing the deductions admissible under Section 80HH of the Act. Today itself, in the matter of

Commissioner of Income-Tax vs. Apollo Construction Co. P. Ltd. [ITR 30 of 1999], we have held in favour of the Assessee. The same is the view in the matter of **Commissioner of Income Tax vs. Sidhpur Isabgul Processing Co. Ltd.** [252 ITR 777]. Question No.2 is, accordingly, answered.

4. While deciding the matter, the Tribunal has observed that the CIT (Appeals) was justified in allowing the premium amounting to Rs.1.05 Lakhs paid for purchase of deferred annuity policy in respect of two Directors as business expenditure.

5. Shri Bhatt, learned Advocate for the Revenue, referring to the judgement reported at **210 ITR 358** in the matter between **Gujarat Steel Tubes Ltd. vs. Commissioner of Income-Tax**, submitted that the Tribunal misapplied the case as the said matter (Gujarat Steel Tubes Ltd.) was decided in favour of the Revenue and the Division Bench of this Court has observed that where premium on deferred annuity on lives of Directors is made, the premium is not deductible.

6. On the other hand, Shri Karia, learned Counsel for the respondent, conceded to the position and has very

fairly submitted that the judgement in the matter of **Gujarat Steel Tubes** (*supra*) was misapplied.

7. The Tribunal, in its order in paragraph-3, has observed that the judgement in the matter of **Gujarat Steel Tubes Limited**, concludes the issue in favour of the Assessee. In our considered opinion, the decision of the Tribunal is patently illegal and perverse because the judgement in the matter of **Gujarat Steel Tubes Limited** (*supra*) is otherwise. We, accordingly, hold that the Appellate Tribunal was not right either in law or on facts in confirming the order passed by the CIT (Appeals) allowing the premium amounting to Rs.1.05 Lakhs paid towards purchase of deferred annuity policies in favour of two directors as business expenditure. The Reference is disposed of by answering Question No.1 in favour of the Revenue and Question No.2 in favour of the Assessee. No costs.

[**R.S.Garg, J.**]

[**D. H. Waghela, J.**]

*kamlesh**